

WILBUR G. HALLAUER

IBLA 78-166

Decided July 26, 1978

Appeal from decision of Oregon State Office, Bureau of Land Management, rejecting filings for recordation of mining claims OR MC 1331 (Wash.) and OR MC 1332 (Wash.) and declaring mining claims null and void ab initio.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Generally

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio.

2. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Mining Claims: Location -- Mining Claims: Withdrawn Land -- Rules of Practice: Evidence -- Withdrawals and Reservations: Effect of

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to the filing of an application for withdrawal which included the land encompassed by the mining claim, but indicates on appeal that the claims designated in the notice were merely a "regrouping," of identical claims filed prior to the segregation of the lands, it is nevertheless proper for the State Office to declare the mining claims null and void since mining claims located on withdrawn land are not subject to recordation.

APPEARANCES: R. E. Mansfield, Esq., Mansfield, Morrissey and Thomas, Okanogan, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Wilbur G. Hallauer appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM) dated December 19, 1977, rejecting filings for recordation of mining claims, OR MC 1331 (Wash.) and OR MC 1332 (Wash.), and declaring the mining claims null and void, ab initio. The filings for mining claims K-33 and K-34 were rejected for recordation because under the Federal Land Policy Management Act of 1976 (FLPMA), 43 U.S.C.A. §§ 1701, 1744 (1977 Supp.) the claims were not located on "Federal lands" subject to location and purchase under the General Mining Law of 1872, as amended, 30 U.S.C. §§ 21-54 (1970). The State Office declared the claims null and void ab initio because they were located on land segregated from mining location under 43 CFR 2091.2-5 on October 3, 1972, when BLM application for withdrawal, OR 11479 (Wash.), was posted on the BLM State Office records. 1/

In his statement of reasons, appellant explains that he recorded the two claims, along with other claims in the Similkameen Mining District, Okanogan County, Washington, on July 25, 1975, not with the purpose of originating a new chain of title, but to constitute a partial compliance with the requirements for recordation in the BLM Office as promulgated under Title 43, Part 3830, Subpart 3833 (effective January 20, 1977).

Appellant alleges that these claims were located many years prior to the withdrawal of October 3, 1972, and that their ownership has never been abandoned or terminated. Appellant submitted a map (Exh. 2) which illustrates the mining locations as he alleges they were designated prior to October 3, 1972. Appellant refers to another map (Exh. 1) to show that there was a regrouping of the identical claims for internal ownership purposes only.

Appellant asserts that under FLPMA and regulations issued pursuant to the Act, recordation of claims located prior to October 21, 1976, is required prior to October 22, 1979. Appellant says that this recordation has not been made, but will be within the time allowed.

Appellant concludes his statement of reasons as follows:

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1/ In this application BLM proposed to withdraw the land from location and purchase under the mining laws in order to establish a natural area for educational, scientific and research purposes.

The present lack of recording in the Bureau of Land Management of the pre-existing locations, coupled with the lack of cross reference in the recording of the claims as regrouped and relocated in 1975 makes the action of the Bureau of Land Management as contained in the Decision appealed from understandable, but in actual fact it is a premature consideration that could lead to a great misunderstanding if this appeal were not taken. The decision should be revised to the extent that the matter be held without a determination as to validity pending October 22, 1979, and the recordation of such other and/or supplemental proof of ownership as may be made by the appellant originating prior to October 3, 1972.

The facts of the record before us show that the land in issue was segregated from mining location by a BLM application for withdrawal posted on the BLM records on October 3, 1972, under the authority of 43 CFR 2091.2-5 and that appellant filed his notices of mining location in the State of Washington on July 25, 1975. In these notices, appellant states that the claims were located on June 25, 1975. Appellant filed the notice for recordation with BLM on May 23, 1977.

[1, 2] The filing of an application for withdrawal of public lands by a Federal agency segregates the lands from location, sale, selection, entry, lease or other forms of disposal under the public land laws, including mining, to the extent that the withdrawal or reservation, if effected, would prevent such forms of disposal. Segregation of the lands becomes effective on the date the proposed withdrawal is noted in the tract books or on the official plats maintained in the proper office. 43 CFR 2091.2-5; 43 CFR 2351. Mark W. Boone, 33 IBLA 32, 33 (1977); United States v. Maley, 29 IBLA 201, 208 (1977).

A mining claim located on land which is segregated from mineral entry at the time of location is null and void from its inception. Janelle R. Deeter, 34 IBLA 81 (1978); Mark W. Boone, *supra*; Leo J. Kottas, 73 I.D. 123, 127-128 (1966), *aff'd sub nom. Lutzenheiser v. Udall*, 432 F.2d 328 (9th Cir. 1970). Furthermore, relocation of claims is not permitted on withdrawn land. Lyman R. Crunk, 68 I.D. 190 (1961). Since the State Office ruling was applicable to appellant's rights to the land under the June 25, 1975, location, the holding that the claims were null and void was proper. Ray L. Virg-in, 33 IBLA 354 (1978); R. C. Jim Townsend, 18 IBLA 100, 102 (1974).

Thus, inasmuch as the relocated claims were null and void ab initio, the State Office correctly refused recordation and declared

the claims null and void. But the rejection by BLM of recordation of the relocated claims is without prejudice to a submission, within the time provided by the statute, of evidence which would establish the existence of other claims on the same land, located prior to the withdrawal of the land. Cf. R. C. Jim Townsend, supra at 101; James M. Wells, A-28549 (February 10, 1961). Appellant remains free to submit evidence of the existence of such prior claims in a separate notice of recordation should he so desire. The claims involved herein, however, were properly declared null and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

